RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL

(Approving a Loan Transaction Among the Tohono O'odham Farming Authority, as Borrower, and Bank of America, N.A., as Lender)

RESOLUTION NO. 20-028

1 WHEREAS. the Tohono O'odham Legislative Council is authorized to "consult, negotiate and 2 conclude agreements and contracts on behalf of the Tohono O'odham Nation..." 3 (Constitution of the Tohono O'odham Nation, Article VI, Section 1(f); and 4 WHEREAS. the Tohono O'odham Farming Authority ("TOFA") is the Tohono O'odham Nation's 5 ("Nation") enterprise authorized to operate the San Lucy, Schuk Toak, and Vaiva 6 Vo Farms on behalf of the Nation; and 7 WHEREAS. TOFA is responsible for promoting the economic development and general 8 welfare of the Nation and its members by profitably developing the agricultural 9 resources of the Nation, pursuant to Paragraph 3.1 of TOFA's Second Restated 10 Plan of Operation; and 11 WHEREAS. the Tohono O'odham Legislative Council must approve waivers of sovereign 12 immunity, both for the Nation and enterprises chartered pursuant to the laws of 13 the Nation, such as TOFA; and 14 WHEREAS. by Resolution No. 13-422, the Tohono O'odham Legislative Council approved a 15 revolving line of credit by and between Bank of America, N.A. ("BofA"), in the 16 original maximum available principal amount of Six Million and No/100 Dollars 17 (\$6,000,000.00) (the "TOFA Line of Credit"), as evidenced by that certain Loan 18 Agreement by and between Lender and TOFA (also referred to herein as 19 "Borrower"), dated October 24, 2013, as modified from time to time (as modified, 20 the "2013 Loan Agreement"); and 21 WHEREAS. as evidenced by the Security Agreement (Multiple Use) by and between Lender 22 and Borrower, dated October 24, 2013, as modified from time to time (as 23 modified, the "2013 Security Agreement"), the payments and performances due 24 under the 2013 Loan Agreement are secured by, among other things, (a) 25 Borrower's grant to Lender of a security interest in and lien on (i) all inventory, 26 including all materials, work in process and finished goods, and (ii) all 27 machinery, furniture, fixtures and other equipment of every type now owned or 28 hereafter acquired by the Borrower (excluding any property of the Borrower in 29 which the John Deere Co., or its affiliates, has a security interest, or any property 30 subsequently purchased by the Borrower from and financed by John Deere Co.) 31 (collectively, the "TOFA Collateral"); and (b) a pledge by the Nation of the collateral 32 as described and set forth in that certain Pledge Agreement by and between the 33 Nation and the Lender of even date with the Loan Agreement and the Security 34 Agreement (the "2013 Pledge Agreement"), consisting of the Nation's account.

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	u .	
1		Account No. 1067506 (TON-SAWRSA TRUST), maintained at the Lender (the
2		"Nation's Pledged Collateral"); and
3	WHEREAS,	by Resolution No. 13-422, the Tohono O'odham Legislative Council approved the
4		limited waiver of TOFA's sovereign immunity, as set forth in the 2013 Loan
5		Agreement and other related loan documents; and
6	WHEREAS,	the maturity date of TOFA Line of Credit is January 1, 2020; and
7	WHEREAS,	due to the ongoing need for financing to fund TOFA operations, crop production,
8		infrastructure improvements and repairs, TOFA has been negotiating with BofA
9		to renew the TOFA Line of Credit and increase the amount of credit available to
10		TOFA, which will give TOFA access to additional funds to provide working capital
11		to TOFA; and
12	WHEREAS,	TOFA has negotiated the terms of a new credit agreement (the "2020 TOFA Loan
13		Agreement") and related documents, which set forth the terms on which BofA will
14		(1) amend and restate, in its entirety, the TOFA Line of Credit to provide financing
15		for agricultural purposes and other working capital purposes and use of the TOFA
16		Line of Credit from January 1, 2020 through January 1, 2022; and (2) provide TOFA
17		a term loan in the principal amount of \$3,000,000.00 with a maturity date of
18		January 1, 2022 (collectively, the "2020 TOFA Loans"); and
19	WHEREAS,	the 2020 TOFA Loans will be secured by the TOFA Collateral pursuant to a new
20		security agreement (the "2020 Security Agreement"), which shall amend and
21		supersede, in its entirety, the 2013 Security Agreement; and
22	WHEREAS,	as an additional condition to the 2020 TOFA Loans, BofA will require the Nation to
23		enter into a new pledge agreement, which shall amend and supersede, in its
24		entirety, the 2013 Pledge Agreement to secure the 2020 TOFA Loans with the
25		Nation's Pledged Collateral (the "2020 TOFA Pledge Agreement," which together
26		with the 2020 TOFA Loan Agreement, the 2020 Security Agreement and other
27		related loan documents executed in connection therewith, are collectively
28		referred to herein as the "2020 TOFA Loan Documents"); and
29	WHEREAS,	the 2020 TOFA Pledge Agreement requires a limited waiver of the Nation's
30		sovereign immunity in favor of BofA to allow the 2020 TOFA Pledge Agreement to
31		be enforced in accordance with its terms; and
32	WHEREAS,	the 2020 TOFA Loan Documents require a limited waiver of TOFA's sovereign
33		immunity in favor of BofA to allow the 2020 TOFA Loan Documents to be enforced
34		in accordance with their respective terms; and
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2		020 TOFA Loan Documents generally require the arbitration of any disputes;
4	and	
3 wh	EREAS; the I	Nation has not enacted a version of the Uniform Commercial Code, an
4	arbit	ration act, or similar laws of the sort that typically would govern complex
5	com	nercial transactions of the nature contemplated in the 2020 TOFA Loan
6	Docu	ments, nor do the Nation's Constitution, laws, or customs address the
7	inter	pretation and enforcement of transactions such as those contemplated in
8	the 2	020 TOFA Loan Documents; and
9 W HI	EREAS, BofA	has conditioned its willingness to provide the 2020 TOFA Loans on having the
10	2020	TOFA Loan Documents interpreted and enforced under the substantive
11	provi	sions of Arizona law, including Art. II, § 25, of the Arizona Constitution
12	relat	ing to the impairment of contracts and the applicable provisions of Arizona's
13	versi	on of the Uniform Commercial Code, so the BofA can be assured that the 2020
14	TOFA	Loan Documents will be interpreted and enforced in accordance with their
15		s; and
16 WHE	REAS, on Ja	nuary 15, 2020, the TOFA Board enacted a Resolution (1) approving (a) the
17	2020	TOFA Loan Documents, and (b) a limited waiver of the TOFA's sovereign
18	immı	mity, as set forth in the 2020 TOFA Loan Documents, subject to the Nation's
19	Legis	lative Council authorizing and approving the limited waiver of TOFA's
20	sover	eign immunity; and
ľ	REAS, the A	gricultural and Natural Resources, Budget and Finance, and Water
22	Resou	rces Committees of the Legislative Council recommend that the Nation: (a)
23	grant	a limited waiver of the Nation's sovereign immunity in favor of BofA to allow
24	the 20	20 Pledge Agreement to be enforced in accordance with its terms, (b) grant
25	a limi	ted waiver of TOFA's sovereign immunity to allow it to enter into the 2020
26	TOFA	Loan Documents with BofA, with those agreements being able to be
27		ced in accordance with their terms; and (c) provide that the 2020 TOFA Loan
28		nents will be interpreted and enforced under the substantive provisions of
29	Arizo	na law and in accordance with specified provisions relating to arbitration;
30	and	
31 WHE	REAS, the Na	ation's best interests will be served by (1) TOFA obtaining financing from
32		n accordance with the terms of 2020 TOFA Loan Documents, with those
33		ments being able to be enforced in accordance with their terms; (2) the
34		n entering into the Pledge Agreement; (3) the Nation granting the requested
35		d waivers of sovereign immunity in favor of BofA; and (4) the Nation

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WHEREAS.

providing that the 2020 TOFA Loan Documents will be interpreted and enforced under the substantive provisions of Arizona law and in accordance with specified provisions relating to arbitration; and

capitalized terms used in this Resolution and its Exhibits, but not defined in this Resolution or the Exhibits, have the meanings set forth in the 2020 TOFA Loan Documents and the Amended and Restated Non-Impairment Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council approves and authorizes the following:

- 1. Limited Waiver of TOFA's Immunity. The Nation hereby grants a limited waiver of TOFA's sovereign immunity in favor of BofA to enable TOFA to enter into the 2020 TOFA Loan Documents with BofA and with those agreements being able to be enforced in accordance with their terms.
- 2. Approval of the 2020 Pledge Agreement. The Legislative Council authorizes and approves the 2020 Pledge Agreement. The Nation's Chairman is authorized to execute the 2020 Pledge Agreement and to deliver it to BofA on behalf of the Nation, along with any and all other documents, certificates, financing statements, consents, representations, and warranties required in connection with the 2020 Pledge Agreement or the 2020 TOFA Loan Documents, and to take all other actions consistent with this Resolution and necessary to allow TOFA to consummate the 2020 TOFA Loans with BofA. No further approval, consent, notice, or filing will be required as a matter of Federal law or the Nation's law for the Nation's Chairman to execute and deliver the 2020 Pledge Agreement or other documents, certificates, financing statements, consents, representations, and warranties required in connection with the 2020 Pledge Agreement, the 2020 TOFA Loans and/or the 2020 TOFA Loan Documents.
- 3. Limited Waiver of the Nation's Immunity. In connection with the 2020 Pledge Agreement, the Nation hereby grants a limited waiver of the sovereign immunity of the Nation from suit or action in favor of BofA on the terms set forth in the 2020 Pledge Agreement to allow the 2020 Pledge Agreement to be enforced in accordance with its terms.
- 4. Applicable Laws.
 - A. The 2020 TOFA Loan Documents will be governed by, and construed in accordance with: the laws of the State of Arizona, including Art. II, § 25, of the Arizona Constitution relating to the impairment of

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contracts and the applicable provisions of Arizona's version of the Uniform Commercial Code and without giving effect to conflict of laws principles; applicable Federal law, including the constitutional law of the United States prohibiting impairment of contracts; applicable provisions of the Nation's Constitution; and this Resolution. For purposes of this Resolution, the term "Uniform Commercial Code" will mean Chapters 1, 2, 8, and 9 of the Arizona Uniform Commercial Code (including the definitions incorporated by reference into Section 47-9102(B) thereof) as in effect from time-to-time.

- В. The transactions contemplated under the 2020 TOFA Loan Documents bear a reasonable relation to the State of Arizona, such that the Nation, TOFA and BofA may agree that the Uniform Commercial Code will govern their rights and duties under the 2020 TOFA Loan Documents, as well as the method of creation. effect of perfection and non-perfection, priority among competing creditors and the enforcement of all security interests granted by the TOFA or the Nation to BofA in accordance with the 2020 TOFA Loan Documents. For purposes of the security interests to be granted under the 2020 TOFA Loan Documents, (i) the "location" of TOFA and the Nation will be Sahuarita. Arizona: and (ii) the office in which to file a financing statement to perfect a security interest in the TOFA Collateral and the Pledged Collateral will be the Office of the Secretary of State of Arizona, except for as-extracted collateral, timber to be cut, or goods that are or are to become fixtures. Additionally, for purposes of Section 47-9109(D)(14) of the Uniform Commercial Code, the Nation acknowledges that TOFA is not a "governmental unit" of the State of Arizona or any other state in the United States.
- C. If an arbitrator or court determines, for any reason, that the Uniform Commercial Code does not govern the rights and duties of the parties under the 2020 Loan Documents, despite the parties' agreement to the contrary, then, in accordance with Title III, Laws of the Tohono O'odham Nation, Section 1-102, the Nation adopts Chapters 1, 2, 8, and 9 of the Arizona Uniform Commercial Code

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Page 6 of 9 1 (including the definitions incorporated by reference into Section 2 47-9102(B) of Chapter 9 and excluding Sections 47-9109(C)(2) and 3 47-9109(D)(14) as in effect from time-to-time as the Nation's law that 4 will govern the 2020 TOFA Loan Documents for purposes of the 5 transactions contemplated under the 2020 TOFA Loan Documents 6 (hereinafter referred to as the "Nation's Secured Transactions 7 Ordinance"), except that, for purposes of the security interests to be 8 granted under the 2020 TOFA Loan Documents, (i) the "location" of 9 TOFA and the Nation will be Sahuarita, Arizona; and (ii) the office in 10 which to file a financing statement to perfect a security interest in 11 the TOFA Collateral and/or Pledged Collateral will be the Office of 12 the Secretary of State of Arizona, except for as-extracted collateral, 13 timber to be cut, or goods that are or are to become fixtures. 14 D. Any laws of the Nation that conflict with or are inconsistent with the 15 provisions of this Resolution, the 2020 TOFA Loan Documents, other 16 than the Nation's Constitution, will be inapplicable to the 2020 TOFA 17 Loan Documents, the TOFA Collateral and the Pledged Collateral to 18 the extent of any such conflict or inconsistency. 19 E. The Nation hereby adopts the following provisions as the 20 21 22 23 24 25 26

Arbitration Provisions applicable to the 2020 TOFA Loan Documents and the transactions contemplated thereby (hereinafter collectively referred to as the "Arbitration Provisions"), which provisions shall be enforceable as a law of the Nation: (i) the agreement of TOFA and BofA in the 2020 TOFA Loan Documents and the agreement of the Nation and BofA in the 2020 Pledge Agreement to settle by arbitration any controversy or claim arising, respectively, under the 2020 TOFA Loan Documents and the 2020 Pledge Agreement and the transactions contemplated thereby, are valid, irrevocable, and enforceable; and (ii) in any proceeding in the Nation's Courts relating to such claims: (a) the Nation's Courts will apply the procedural rules of the Nation's Courts and the substantive law of the jurisdiction selected by the parties to the 2020 TOFA Loan Documents, including the 2020 Pledge Agreement, and authorized by these Resolutions; (b) if any suit or proceeding is brought in the Nation's Courts upon any issue referable to arbitration under the

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2020 TOFA Loan Documents, including the 2020 Pledge Agreement, the Court, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration; (c) if any party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under the 2020 TOFA Loan Documents, including the 2020 Pledge Agreement, petitions the Nation's Courts for an order directing that such arbitration proceed in the manner provided for in such agreement, the Court shall hear the parties and, upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is arbitration in accordance with the terms of the agreement; if there is a dispute about whether a party has an obligation to arbitrate any issue, the Court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement to resolve that dispute; (d) an arbitration award will not be subject to review or modification by the Nation's Courts for any reason other than the circumstances described in 9 U.S.C. §§ 10-11; (e) when an arbitration award requires the performance of any act other than the payment of money, the Nation's Courts may direct the enforcement thereon in the manner provided by law; and (f) to the extent permitted by federal law, the jurisdiction of the Nation's Courts over any actions to enforce an agreement to arbitrate, to compel arbitration pursuant to the 2020 TOFA Loan Documents, including the 2020 Pledge Agreement, and these Resolutions, and to enforce an order and award resulting from an arbitration shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Nation has explicitly consented in the 2020 TOFA Loan Documents, including the 2020 Pledge Agreement, and in these Resolutions.

- 5. Binding Obligation; Lien Priority; Impairment.
 - A. When fully executed, the 2020 TOFA Loan Documents will be the valid, binding, and enforceable obligations of TOFA and the 2020

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1		Pledge Agreement will be a valid, binding, and enforceable
2		obligation of the Nation.
3	В.	Upon the perfection of a lien by BofA, the lien created by the TOFA's
4		pledge of TOFA's Collateral and by the Nation's pledge of the Nation's
5		Pledged Collateral under the 2020 Pledge Agreement will be
6		superior to, and will have first priority over, all other liens, and will
7		be valid and binding from the time the pledge is made as evidenced
8		by the execution and delivery of the 2020 TOFA Loan Documents.
9	c.	The Nation will take no action that would materially impair the
10		rights, liens, interests, and/or remedies provided in the 2020 TOFA
11		Loan Documents without the prior written consent of BofA. The
12		Legislative Council finds that no provision of the Nation's
13		Constitution or laws, and no custom, would impair the 2020 TOFA
14		Loan Documents.
15	6. The	Nation hereby agrees that this Resolution relates solely to the 2020
16	TO	FA Loan Documents and does not in any manner affect any borrowing
17	her	etofore or hereafter made under any other financing arrangement,
18	and	that this Resolution shall not serve to revoke or alter any resolutions
19	pre	viously delivered by Nation to BofA and shall not (unless specifically
20	oth	erwise provided) be revoked by any Resolutions subsequently

- ect any borrowing ing arrangement, er any resolutions unless specifically otherwise provided) be revoked by any Resolutions subsequently delivered to BofA relating to other financing arrangements between BofA, the Nation and/or TOFA.
- 7. The Nation hereby agrees that all actions heretofore taken, and all documents heretofore executed by the Authorized Officer in connection with the foregoing Resolutions, are hereby ratified, confirmed, and adopted as the acts and deeds of the Nation and/or TOFA, as the case may be, as of the effective date of this Resolution.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 17^{TH} day of JANUARY, 2020 at a meeting at which a quorum was present with a vote of 2,125.2 FOR; 1.050.5 AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(f) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.984).

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1 2	3 I	aquin, Legislative Chairma	
3 4	$\frac{17}{2}$ day	of Munu	_, 2020
5 6 7		V	
7 8	7		
9	9 ATTEST:		
10 11	1 <u>Munillula</u>		
12 13			
14 15	5		
16 17	6 Said Resolution was submitted for approval to the	office of the Chairman	of the Tohono
18 19	pursuant to the provisions of Section 5 of Article V	I) of the Constitution and	d will become
20	hours of submittal.	iner approve or disappro	ve it within 48
21 22	2 Tøhono o'	ODHAM LEGISLATIVE COU	NCIL
23 24	4	to Co	
25 26		quin, Legislative Chairma	
27 28			
29 30	9 /		
31 32	1 [Y] APPROVED on the // da	y of Jenny	, 2020
33 34	at <u>S.4/</u> o'clock	, <u>(</u> .m.	
35	\sim	$\lambda $	
36 37	7 //\/\		_
38 39	TOHONO O'ODHAM	HAIRMAN (INATION	
40 41) 		
42 43			
44 45	Returned to the Legislative Secretary on the // day	of of	
46 47	5 2020, at 2.4 Co'clock,	<u>)</u> .m.	
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49 50	Evonne Wilson, Legislative Secretary	-	
51			

ACTION: APPROVING A LOAN TRANSACTION AMONG THE TOHONO O'ODHAM FARMING AUTHORITY, AS

BORROWER, AND BANK OF AMERICA, N.A., AS LENDER

MOVED: COUNCILMAN DANIEL L.A. PRESTON HI

SECOND: COUNCILWOMAN GLORIA RAMIREZ

DATE: JANUARY 17, 2020

DISTRICT	LEGISLATIVE REPRESENTATIVES	#OF VOTES	FOR	AGAINST	NOT VOTING	ABSE
BABOQUIVARI 384.8	(Francine Schooling) (Present)	192.40	х			
	2. ALBERTA J. RAY (Frances G. Antone)	192,40	X			
CHUKUT KUK 347.5	1. VIVIAN JUAN-SAUNDERS (Juanita Homer)	173.75	x			
317.3	2. MARLAKAY HENRY (Billman Lopez)	173.75	X	į		
GU ACHI 279.3	1. VICTORIA HOBBS	139.65	х			
	2. TIMOTHY L. JOAQUIN (Louis L. Johnson)	139.65	X			
GU VO 264.5	1. DALLAS LEWIS (Absent) (Nacho Flores) (Present)	132.25		X		
	2. GRACE MANUEL	132.25		x		
HICKIWAN 213.8	1. SANDRA D. ORTEGA	106.90	х			
213.6	2. LOUIS R. LOPEZ (Delma M. Garcia)	106.90	X			
PISINEMO 230.7	1. MONICA K. MORGAN	115.35	X			-
	2. MARIÉTTA MARTIN	115.35	x			
SAN LUCY 235.6	1. GLORIA RAMIREZ	117.80	X			
233.0	2. JANA MONTANA (Lorraine M. Eiler)	117.80	x	1		
SAN XAVIER 238.9	1. JANICE FELIX (Adam Andrews)	119.45		x	-	<u>.</u>
	2. DANIEL L.A. PRESTON III (Racheal Vilson-Stone)	119.45		X		
SCHUK TOAK 189.0	1. QUINTIN C. LOPEZ (Agnes V. Joaquin)	94.50	x			
103.0	2. TERESA F. DONAHUE (Alberta Espinoza)	94.50	x			
SELLS 547.1	1. EVELYN JUAN MANUEL	273.55		Х		
J. 2. 1. 1	2. ARTHUR WILSON	273.55		x		
SIF OIDAK 244.5	1. LUCINDA ALLEN (Absent) (Yolonda Garcia) (Present)	122.25	x			
	2. MARY LOPEZ (Absent) (Ann M. Garcia) (Present)	122.25	x			X
	TOTAL	3,175.7	2,125.2	1,050.5	-0-	[01]